

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: July 5, 2007

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Legal Issues Regarding Attorney General Comments on Draft Environmental Impact Report for City of San Diego Draft General Plan, Project No. 104495, SCH No. 2006091032

INTRODUCTION

The City is currently revising its General Plan to address growth and development anticipated to occur over the next twenty years. As a part of this process, the City must prepare, pursuant to the requirements of the California Environmental Quality Act [CEQA], an Environmental Impact Report [EIR]. The EIR must address, and propose mitigation for, the environmental impacts of the anticipated growth. Among these impacts is the exacerbation of global climate change as a result of development impacts like increased energy usage and increased vehicle miles traveled. The City has produced a Draft Environmental Impact Report [DEIR], and is currently considering comments on this document.

The California Attorney General submitted a letter to the City on June 11, 2007 in which it made extensive comments on the DEIR and General Plan. The submission of the Attorney General's comments is significant both because the General Plan update must be approved by the State of California and also because the Attorney General – the principal state agency enforcing CEQA - has recently demonstrated his willingness to sue local governments that fail to adequately address global warming in their General Plans.

Recently, the Attorney General filed a lawsuit against San Bernardino County accusing it of not analyzing the impact of increased greenhouse gases from future growth in its recently adopted general plan. San Bernardino's General Plan is the map for growth through 2030 with

projections for more homes and increased traffic to accommodate a population growth climbing to 2.6 million from the current number of 1.7 million. This was the first time the State of California has sued a County for not taking into account global warming. The Center for Biological Diversity, the Sierra Club and the San Bernardino Valley Audubon Society also filed suit against the County of San Bernardino on similar issues. The Center for Biological Diversity and The Friends of San Diego have also commented on the City of San Diego's General Plan Update and EIR.

The Attorney General's letter recognizes what we in City Government already know – that San Diego has made extensive efforts to address global climate change, and can rightly be viewed as a leader on this issue in many ways. At the same time, in the specific area of addressing the global impact of development in the City, the City Attorney's Office recognizes that, as we update the General Plan, there is a pressing need for the City to become more aggressive to remain in compliance with the law as applied in light of evolving scientific certainties. This memo will discuss the Attorney General's specific recommendations, with a goal toward ensuring that the City of San Diego remains both in compliance with the law and, more importantly, in a leadership position on climate change issues.

As a general matter, aggressive measures to assure both present and future compliance with environmental laws is clearly in the best interest of the People of San Diego. Failure to follow this philosophy has had serious adverse consequences for San Diego in a number of recent instances. For example, the City's sewer, water, and stormwater systems are now in need of major, expensive upgrades mandated by state and federal requirements. In each case, more foresight might well have allowed the City to plan and control efforts that will now, instead, be dictated largely from above. We must avoid repeating this mistake by responsibly addressing climate change in our General Plan.

The Attorney General's comments, on a substantive level, raise legitimate and significant legal questions about the adequacy of both the present General Plan and the proposed update. The most important point that the Attorney General makes is that, while the General Plan Update as currently proposed reflects numerous laudable policy goals, we must translate these goals into "enforceable mitigation measures." It is not enough to simply want to address climate change, or to have ideas about how to do so. These ideas must be accompanied by enforcement tools that will ensure that the ideas and policies are actually implemented. Only then will the City be able to ensure compliance with the law.

In response to the June 11th letter from the California Attorney General's Office, representatives from the City of San Diego, the Office of the City Attorney and SANDAG met with a representative from the Attorney General's office on June 27, 2007 to discuss legal concerns regarding the City's Draft General Plan Update and Environmental Impact Report. As noted in the Attorney General's June 11th letter, the City has created many opportunities for the community to achieve a sustainable future.

Steps Taken by the City to Demonstrate Commitment to Addressing Global Warming

- On January 29, 2002, the San Diego City Council unanimously approved the San Diego Sustainable Community Program which included the establishment of a 15% reduction of green house gases by 2010. The Sustainable Community Program also establishes a scientific advisory committee to identify means to improve GHG emission reductions.
- On April 16, 2002, the Mayor and City Council adopted CMR 02-060 which requires City projects to achieve the U.S. Green Building Council's LEED silver standard for all new buildings and major renovations over 5,000 square feet. This places San Diego among the most progressive cities in the nation in terms of sustainable building policies.
- The City of San Diego participates in the Cities for Climate Protection [CCP] program coordinated through the International Council of Local Environmental Initiatives [ICLEI].
- The City of San Diego developed a Climate Protection Action Plan in 2005 to address global warming. This plan sets forth the City's goal to provide leadership to others in the region regarding strategies to significantly reduce green house gas emissions.
- On August 31, 2006, the San Diego City Attorney published "Interim Report No. 11, A Call to Action: City of San Diego Must Prepare Its Infrastructure to Withstand Anticipated Impacts from Global Warming," which discusses San Diego's commitment to address global warming.
- In partnership with Scripps Institution of Oceanography, the San Diego City Attorney's Office, and San Diego City Council Member Donna Frye, have co-sponsored a resolution to proclaim April 11, 2007 as Global Warming Awareness Day for the City of San Diego.
- On April 12, 2007, the San Diego City Attorney's Office hosted a panel discussion on regulatory and business climate changes needed to develop San Diego as a green industry hub. As climate change becomes an increasingly important issue, the San Diego City Attorney's Office is committed to working with Mayor's Office, City Council, industry, educational institutes, and non-profit organizations to make San Diego a desirable base for green businesses.
- The City of San Diego's commitment to become increasingly efficient with resources, including energy, water, and materials associated with construction projects, is demonstrated in Council Policy 900-14 "Green Building Policy" adopted in 1997, Council Policy, 900-16 "Community Energy Partnership," adopted in 2000, and the updated Council Policy 900-14, "Sustainable Buildings Expedite Program" adopted in 2001.

Steps Other Cities Have Taken to Address Global Warming

The City of San Jose has instituted a program that requires a solar leasing permit in order to advertise or place leased solar energy devices.

The City of Davis also requires solar access easements be provided as a condition to project approval.

The City of Santa Monica has adopted mandatory “Green Building Standards” to minimize environmental impacts. Further, the ordinance imposes requires all new buildings be built with post-consumer recycled content that meets United States Environmental Protection Agency [EPA] standards.

The City of Los Angeles adopted a resolution in support of the International Council on Local Environmental Initiatives’ (ICLEI) Cities for Climate Protection Campaign, which committed Los Angeles to the development of a Climate Action Plan (CAP). Los Angeles’ Energy CAP includes a variety of programs including:

- Renewable energy programs that require power plants to use cleaner, renewable energy resources;
- Energy efficiency programs that convert city facilities and street lights to more efficient, lower energy consumption technologies;
- Recycling programs that reduce energy used in the manufacture of goods and reduce the generation of GHGs from the landfills;
- Transportation programs that incorporate clean alternative fuels and electric vehicles (as well as the necessary infrastructure), bicycles for law enforcement patrols, increased public transit alternatives, adjusted traffic signal timing to improve traffic flow, and expanded employee ridesharing efforts; and,
- Tree planting programs involving youth in the Los Angeles school system that provide shade for buildings which lower energy usage and also acts as a carbon sink, removing carbon from the atmosphere.

The Los Angeles Energy CAP benefits heavily outweigh the costs. Studies show that Los Angeles will, among other things:

- Avoid any expansion of the city’s fleet of vehicles projected by the year 2010;
- Exceed the initial capital cost and save \$10 million plus in operating costs by converting the city streetlights to high-pressure sodium or metal halide lamps;

- Prevent about 149,000 tons of carbon dioxide (CO₂) per year from entering the atmosphere due to landfill and biosolid gas to energy production while reducing the amount of power bought by the facilities and/or allowing the facilities to sell the energy for a profit;
- Water conservation efforts resulting in minimized need for expensive import of water;
- Tree planting resulting in reduced energy costs on air-conditioning with a return of about \$2.73 in savings for every \$1.00 invested;
- Upgrades to energy efficient mechanical, electrical, lighting, and water systems resulting in reduced operating expenses over time and a net savings to the city after the projected 10-year pay back period;
- Procurement of fuel efficient vehicle fleets resulting in cumulative savings to the city; and,
- Improved traffic flow due to better signal timing resulting in a savings of 434, 187 tons of CO₂ per year.

Los Angeles has implemented monitoring efforts to further study and ensure the effectiveness of its programs.

The City of Santa Rosa adopted a resolution and became a member of the Cities for Climate Protection as part of the ICLEI project. The Santa Rosa resolution committed the city to conducting an inventory of its GHG emissions, setting a target for the reduction of GHG emissions, creating and implementing an action plan to meet the targets, and to monitor the progress. As of 2001, the inventory of emissions was completed and Santa Rosa is determining the appropriate target for reduction based on viability. In order to meet the targets, Santa Rosa has identified 19 opportunities including increasing alternative fuel vehicles for city fleets, increasing employee education about recycling and re-use of waste, retrofitting existing buildings with better energy efficient machines and lighting, implementing new green building programs and practices starting with the construction of the new City Hall, converting street lights and traffic signals to Light Emitting Diode (LED) with solar power, using natural lighting in garage facilities, and retrofitting aeration blowers in the water sewer systems to save the city \$390,000 a year and avoid 1,172 tons per year of CO₂ production alone.⁵⁶

The City of San Francisco prepared a Climate Action Plan committing San Francisco to a reduction of GHG emissions to 20 percent below its 1990 levels by 2012. San Francisco's Action Plan focuses on key areas contributing to the reduction in GHG production including transportation, energy efficiency, renewable energy, and solid waste. Specifically, in the transportation category, San Francisco will increase public transit, the use of ridesharing, bicycling and walking, and clean air vehicles while reducing the overall number of vehicular

trips discouraging driving. The overall projected reduction in GHG emissions is 963,000 tons per year. San Francisco expects to reduce its emissions by an additional 801,000 tons per year due to increased energy efficiency by increasing incentives and providing installation and technical services in residential, commercial and municipal buildings, expanding education and outreach, and strengthening legislation, codes and standards. Renewable energy is projected to reduce emissions in the amount of about 548,000 tons of carbon dioxide per year with the development of solar, wind, biomass and other emerging renewable energy technologies as well as by supporting green power buying. In the solid waste sector, the city expects to reduce carbon dioxide in the amount of 302,000 tons per year by increasing recycling and composting in residential, commercial and construction areas, supporting collection of recyclables, promoting waste reduction and re-use, and expanding existing municipal programs. The City of San Francisco projects its overall approximate reduction to total 2,614,000 tons of carbon dioxide per year.

A comparison of San Diego's efforts with those of other cities reveals an overarching difference. While these other cities implement policy through mandates, San Diego's efforts rarely move beyond planning and goal setting. This must change. Changes in the General Plan are a good first step. A well crafted DEIR is essentially to the production of a General Plan that moves the City toward mandatory measures to address climate change.

I. The DEIR Recognizes Global Warming Impacts as a Significant Cumulative Impact of the Project that Must Be Mitigated.

The concerns of the Attorney General include the fact that the City of San Diego Climate Action Plan "primarily addresses municipal GHG emissions, which represent only and 2% of the total GHG emissions in the City, while 98% of emissions result from City residences and businesses."

The Attorney General expressed concern that:

[r]evisions to the 'City of Villages' development strategy included in the General Plan may be needed to make sure that it is not optional, but rather, imposes binding, enforceable requirements that constitute adequate mitigation under CEQA.

Further, the Attorney General states:

As the DEIR notes, although the proposed General Plan includes some binding policies that will reduce GHG emissions, many of the relevant policies in the Plan only express support for actions that would reduce GHG emissions, but do not require those actions; because they are not enforceable requirements, they do not constitute mitigation under CEQA. (Pub. Res. Code §21081.6(b)).² We also believe that there are additional actions to reduce GHG emissions that the City should consider and adopt if they are feasible.

FTNT 2: For example, the only policy in the General Plan that expressly refers to the GHG emissions states: 'Support state, federal, and local efforts to increase fuel efficiency and reduce greenhouse gas emissions.' This policy does not impose any enforceable obligations to design or build new development in a way that minimizes GHG emissions.

As a City, we should not minimize what additional legal steps are needed to move the City forward in effectively addressing and reducing our greenhouse gas contributions. We recognize that, in the past, the City has allowed and promoted remarkable growth without a parallel momentum to improve, among other things, infrastructure support, transportation alternatives, water supply, water quality and building design using a legal framework that ensures a sustainable future for the residents of the City. That legal framework, as the Attorney General has clearly addressed in the June 11th letter, includes enforceable requirements for reducing greenhouse gas emissions over the life of the General Plan—the City's 20 year planning horizon. Without such a legal framework, the City will continue to be faced with the various environmental crises that have affected our community for the last twenty or more years.

The City must commit to mitigating the combined effect that global warming and additional development will have on San Diego's water supply. The City's 1.3 million residents currently use approximately 210 million gallons of potable water per day. Without additional conservation, another 360,000 residents would add 58 million gallons per day to that demand.

The City relies too much on imported water to meet its needs. About 90 percent of the City's water supply is imported from the Colorado River and the California State Water Project, whose source is primarily the Sierra's snowpack, both through the Metropolitan Water District [MWD]. The City's reliance on imported water has twice been criticized by the San Diego County Grand Jury, first in 1999 and again in May of this year. The latter report accuses the City of not acting in the best interest of its citizens by failing to implement measures to reduce reliance on imported water.

To make matters worse, San Diego is currently importing more water from MWD than it has legal rights to. The San Diego County Water Authority [CWA] uses about 22 percent of MWD's water supply, even though it is only entitled to 15 percent. The CWA challenged MWD's apportionment of water rights in court, and lost. *San Diego County Water Authority v. Metropolitan Water District of Southern California*, 117 Cal. App. 4th 13 (2004). For the time being, San Diego is allowed to use more than its allotment of water because there is currently a surplus. In the event of a drought, though, San Diego could immediately lose up to a third of its water, while other Southern California cities would see little impact. Moreover, current climate change projections include severe reductions of the Sierra snowpack, which will put further pressure on San Diego's supply as all California cities look to maximize utilization of their right to increasingly scarce water resources.

The City has some ability to mitigate the impact new development and global warming places on the City's water supply. Within the last ten years, the City started operation of two new water reclamation plants capable of recycling 45 million gallons of sewage into irrigation quality water or better. Most of this capacity is not being utilized, primarily due to the lack of a distribution system sufficient to transport the reclaimed water to potential customers. Strategies on how to utilize this available capacity have been reviewed and considered in the City's 2006 Water Reuse Study, but that study has not been forwarded to the City Council for discussion.

The City Council must immediately consider the 2006 Water Reuse Study. Pursuant to Municipal Code Section 64.0806(a), the City must update its Water Reclamation Master Plan every 5 years. The 2006 Water Reuse Study is intended to provide guidance to the City Council on what reclamation strategies to include in the Master Plan. The last update to the Water Reclamation Master Plan was adopted in 2000. The City is now almost two years late in updating the Master Plan, in violation of the Municipal Code.

To decrease the City's reliance on imported water, the City must maximize the use of reclaimed water. New and existing development is required to use reclaimed water for irrigation, where available. San Diego Municipal Code § 64.0807(a). Reclaimed water is currently available only in the northern and southern areas of the City, but expansion of the system into the central part of the City is a strategy discussed in the 2006 Water Reuse Study.

In 1988, the City adopted the goal of reclaiming 64 million gallons of wastewater per day by 2010. City Council Policy 400-12. With only 45 million gallons in plant capacity, the City clearly cannot meet its goal. The City can and must, however, maximize the use of reclaimed water to mitigate the effect new development has on the City's potable water supply and reduce our reliance on imported water.

Although the general consensus is that global warming will result in less rainfall, new development can significantly impact the quality of the City's storm water runoff. Less rainfall means there is less storm water to dilute the pollutants left by our cars, pets, and fertilizers that are washed into the streams, rivers, and ultimately into the ocean. So while there may be less storm water in the future, the concentration of contaminants in the storm water will be higher.

This year, the San Diego Regional Water Quality Control Board adopted two storm water orders that significantly affect the City. The first is the new regional storm water permit which establishes requirements the City must meet to discharge storm water into the environment. The second is an order setting specific water quality levels for Chollas Creek for certain metals common in automobile brake pads and residential fencing. Similar orders are anticipated for all the drainage basins in San Diego.

The City must impose conditions on new development designed to mitigate its impact on existing storm water drainage basins. Conditions can include reductions in proposed "hardscape" or requiring permeable surfaces that absorb water rather than reflecting it. New

development can also be required to pay its fair share of storm water infrastructure that may be necessary to comply with the City's storm water permit or related orders of the Regional Board.

II. The City as Lead Agency is Required under CEQA to Adopt All Feasible Alternatives and Mitigation Measures.

The Attorney General reminds the City of its legal obligations to comply with CEQA in light of the determination by the City that the global warming-related impacts of the General Plan are cumulatively significant. These requirements include the mandate that public agencies not approve projects with significant environmental impacts when there are feasible alternatives or mitigation to lessen or avoid those impacts. As provided by the Attorney General, "The agency must ensure that 'measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, and other measures,'" citing both case law and Public Recourse Code §21081.6.

The City of San Diego's current General Plan is not in full compliance with applicable laws. There are adverse legal consequences as a result of such non-compliance, which in the past have resulted in fines and penalties against the City. The Attorney General notes that "although a measure may be unpopular with some members of the public, if the measure can be included without substantial hardship, it should be considered feasible."

III. The City Should Adopt Enforceable Mitigation Measures to Reduce the GHG Emissions.

The Attorney General provides clear direction to the City of San Diego, that "[t]he policies in the proposed General Plan that express 'support' for measures that would reduce GHG emissions should be revised to establish enforceable requirements," including:

- Requiring new buildings and major renovations incorporate all feasible green building design principles and building materials;
- Require new development to meet sustainable landscape design and maintenance criteria;
- Require new development meet site design requirements that minimize energy use by taking advantage of sun-shade patterns, prevailing winds, landscape and sunscreens;
- Require new residential development of more than 6 units participate in the California Energy Commission's New Solar Homes Partnership;
- Require new or major renovations of commercial or industrial development (that exceeds a certain square foot minimum) incorporate renewable energy generation to provide the maximum feasible amount of the project's energy needs;

- Require light-colored and reflective roofing materials and paint, light-colored roads and parking lots, shade trees in parking lots, and shade trees on the south and west sides of new or renovated buildings;
- Require water minimization efforts to address construction and demolition recycling, commercial paper recycling, and multiple family recycling, including a requirement that construction projects recycle unused construction materials and that demolition projects submit a plan to maximize reuse of building materials, along with the required permit application;
- Require adequate mitigation under CEQA for the ‘City of Villages’ development strategy.

Additionally, the Attorney General’s letter addresses policies to reduce GHG emissions that should be analyzed in the EIR, including:

- Require off-road diesel-powered vehicle used for construction be low-emission vehicles or use retrofit emission control device;
- Require new residences use all Energy Star rated appliances and the most energy efficient water heaters and air conditioning systems that are feasible;
- Require new buildings and major renovations use energy efficient lighting (indoor and outdoor) that reduces electricity use by substantially more than current state building code requirements;
- Include City’s Climate Action Plan as part of the General Plan and adopt an updated plan as a General Plan amendment.

We recommend that the City implement the changes addressed in the Attorney General’s June 11th letter, including replacing all words “encouraging,” “supporting,” “recommending,” and “promoting” a greener City with “requirements” that will be implemented through development of City ordinances over a schedule of five, ten, fifteen and twenty years.

Additional Recommendations on the General Plan

Comment 1: The Community Plans need to be amended at the same time or on a parallel track with the General Plan. This is an issue because most of the mandatory detail required by state law in the General Plan is deferred to a later date when the Community Plans are amended. The City leaves all the detail to the Community Plans, which will not be revised for many years to come. The City may not leave the details for a future date when funding is available and comply with State mandated requirements for the General Plan.

The City Attorney has proposed, as a Charter change, that Community Plans be updated at least every ten years. The Council shall provide an appropriate level of funding in the annual budget

for Community Plan updates after considering recommendations of the Community Planning groups, and in accordance with other Charter requirements on budgeting and appropriations. The Council shall also make available sufficient resources to enable Community Planning groups to fulfill their duties under the Charter.

Comment 2: Land Use Element: Gov. Code § 65302(a) requires that the land use element "include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." While the draft plan includes an analysis of building intensity by including information on dwelling units per acre, it does not appear to connect these to population density in any way.

In *Twain Harte Homeowner's Ass'n, Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 697-99, the court addressed this issue. "The County contends in the instant case that the measurement of dwelling units per acre meets the requirement for a statement of standards for population density and that the omission of a statement of population density for 'commercial,' 'industrial' and 'open space' land use designations reflects the fact that no residential development is permitted on those lands." The Court noted "[i]t could be argued that in the planning arena standards of population density might most usefully be stated in terms of dwelling units per acre where some relationship between an average number of people per household has been established and where distinction based upon factors such as the size and type of dwelling (e.g., single family residence, multiple family residential, mobilehome) are supported by the plan." The Court then concluded "[i]n the instant case, no statement relating dwelling units to numbers of people is presented in the general plan. Thus, we conclude that appellant's land use element is deficient insofar as it lacks an appropriate statement of standards for population density based upon numbers of people."

Because density is so closely tied to future growth and greenhouse gas emissions, it is appropriate for the City to include more information relating to population density and dwelling units per acre. The impact of density on traffic congestion, air pollution, noise and neighborhood aesthetic were raised by a recent District Court ruling invalidating the Housing Element of San Francisco's General Plan. The Court determined that the environmental consequences of the plan's increased density were not adequately considered.

Comment 3: Noise Element. Gov. Code § 65302 requires a noise element which "quantifies the community noise environment in terms of noise exposure contours for both near- and long-term levels of growth traffic activity."

In *Camp v. Board of Supervisors of Mendocino County* (1981) 123 Cal.App.3d 334, the Court found that a general plan's noise element must quantify noise levels and expected noise exposure, as supported by existing data. The Court found that the County of Mendocino's noise element did not include "noise exposure information as determined by monitoring with regard to areas deemed noise sensitive as required by" the statute. Further, the noise element did not contain a noise exposure inventory, current and projected. Thus, the element did not comply with the

requirements of the statute and was deemed inadequate. The very same defects are found in the draft general plan and should be addressed.

Comment 4: Public Facilities, Services and Safety Element. State Guidelines require addressing the following: evacuation routes with appropriate signage, the minimum road widths and turnouts for evacuation routes, and clearance around structures for evacuation routes. In addition a safety element should also include peakload water supply requirements and how those requirements should be met. The City's draft general plan does not appear to address the above issues. Revisions are therefore needed.

Comment 5: Recycling. The City's current recycling program is both voluntary and less extensive than it should be to adequately address the City's needs. The City has show great hesitation in expanding this program and making it mandatory. A committee of the City Council has recently been considering a mandatory, City-wide recycling program, as proposed by the City Attorney. The difference between the City's program and the proposed mandatory program is exactly the kind of difference that separates an adequate General Plan from an inadequate one.

Building the Market through Law Change

The City Attorney's Office supports the development of laws requiring commitments by industry, developers and the community to actively engage in the reduction of greenhouse gas emissions. It is good business to create legal requirements for greenhouse gas emission reductions. Laws that make compliance mandatory create an even playing field for all market participants.

In California, regulatory change has often spurred new industry. At the state and local level (in other cities), the public sector is hard at work creating new laws to address global warming and promote more energy efficient design, public transportation incentives, and reliable energy alternatives. One of the advantages of this is the attraction of greener businesses to San Diego, such as the "Cleantech" industry.

The "Cleantech" industry, including reliable alternative energy sources, is economically compelling. We have the potential here in San Diego to be a major driving force for new investments and job growth with the creation of new markets (spurred on by incentives, regulatory/law change and public programs) and the attraction of additional private venture capital and government investment. We can create a cleantech cluster—a hub for green technology and companies--by:

- Attracting and nurturing green/clean industry start-ups
- Encouraging clean/green industry private equity investors
- Contributing to a growing market demand.

The Cleantech industry includes a broad range of products and services, such as alternative energy generation, wastewater treatment and more resource-efficient industrial processes. They

share one common thread: they use new, innovative technology to create products and services that compete favorably on price and performance while reducing humankind's impact (or footprint) on the environment.

Why is California, and more specifically San Diego, situated to become the Cleantech industry leader?

- A world-class technology industry (biotech, information technology, medical)
- Excellent higher education institutions
- An entrepreneurial culture
- Access to capital
- Perception by business industry leaders that California has a pro-environmental public policy stance that supports regulatory change (law change) in order to create more market certainty for low-emission solutions.

One of the driving factors in attracting Cleantech business to San Diego and fostering new business startups is whether a market base exists to drive a growing industry. The goal is to create market certainty for investors, entrepreneurs and customers. Local, state and regional environmental regulations can be powerful drivers of economic growth. For example,

- California air pollution control industry, employs roughly 32,000 people and is a 6.2 billion dollar industry as a consequence of state and regional laws and programs.
- In California, the environmental industry already supports approximately 180,000 jobs.
- Nationwide, renewable energy industries (solar, wind, geothermal, biomass) employ approximately 115,000 people.
- Nationwide, the remanufacturing industry (recovering, disassembling and reusing or recycling a product's parts) employs 480,000 people and generates 53 billion in annual revenue.

If San Diego can successfully attract Cleantech industry, then we will be positioned to create a Cleantech cluster—a hub for green companies and technology. In renewable energy alone, San Diego has a chance to create high-paying skilled jobs for our economy.

IV. The City Should Adopt the Two Environmentally Superior Alternatives that would Reduce the GHG Emissions.

The Attorney General urges the City to adopt the two “environmentally superior” alternatives to the proposed General Plan identified in the DEIR, the Enhanced Sustainability Alternative and the Increased Parking Management Alternative.

CONCLUSION

The Attorney General's comments, on a substantive level, raise legitimate and significant legal questions about the adequacy of both the present General Plan and the proposed update. In order to fully comply with the law and responsibly address climate change, improvements are needed. The General Plan must include identifiable, specific, mandatory measures that can be implemented on strict time tables. This Office intends to coordinate with other City departments to craft improvements that will insure that the new General Plan is not merely a policy document but is a blueprint for implementing mandatory, enforcement requirements. As the Attorney General has noted, the update as proposed contains many mere policies that "express support for actions... but do not require those actions; because they are not enforceable requirements, they do not constitute mitigation under CEQA." The Attorney General has offered excellent guidance in this regard, but we can and must do even more.

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